



General Assembly

February Session, 2016

Substitute Bill No. 5640

* _____HB05640JUD_____032916_____*

**AN ACT CONCERNING COMPELLED DISCLOSURE OF CELLULAR
TELEPHONE AND INTERNET RECORDS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-47aa of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2016*):

3 (a) For the purposes of this section:

4 (1) "Basic subscriber information" means: (A) Name, (B) address, (C)
5 local and long distance telephone connection records or records of
6 session times and durations, (D) length of service, including start date,
7 and types of services utilized, (E) telephone or instrument number or
8 other subscriber number or identity, including any assigned Internet
9 protocol address, and (F) means and source of payment for such
10 service, including any credit card or bank account number;

11 (2) "Call-identifying information" means dialing or signaling
12 information that identifies the origin, direction, destination or
13 termination of each communication generated or received by a
14 subscriber or customer, excluding geo-location data, by means of any
15 equipment, facility or service of a telecommunications carrier;

16 (3) "Electronic communication service" means "electronic
17 communication service" as defined in 18 USC 2510, as amended from
18 time to time;

19 (4) "Geo-location data" means information concerning the location
20 of an electronic device, including the real-time and historical location
21 of the device, that, in whole or in part, is generated by, derived from or
22 obtained by the operation of an electronic device, including, but not
23 limited to, a cellular telephone surveillance device;

24 [(4)] (5) "Law enforcement official" means the Chief State's Attorney,
25 a state's attorney, an inspector with the Division of Criminal Justice, a
26 sworn member of the Division of State Police within the Department of
27 Emergency Services and Public Protection or a sworn member of an
28 organized local police department;

29 [(5)] (6) "Remote computing service" means "remote computing
30 service" as defined in section 18 USC 2711, as amended from time to
31 time; and

32 [(6)] (7) "Telecommunications carrier" means "telecommunications
33 carrier" as defined in 47 USC 1001, as amended from time to time.

34 (b) A law enforcement official may [request] apply for an ex parte
35 order from a judge of the Superior Court to compel (1) a
36 telecommunications carrier to disclose call-identifying information
37 pertaining to a subscriber or customer, or (2) a provider of electronic
38 communication service or remote computing service to disclose basic
39 subscriber information pertaining to a subscriber or customer. The
40 judge shall grant such order if the law enforcement official [states]
41 swears under oath to a statement of (A) a reasonable and articulable
42 suspicion that a crime has been or is being committed [or that exigent
43 circumstances exist] and such call-identifying or basic subscriber
44 information is relevant and material to an ongoing criminal
45 investigation, [The order] in which case such order shall not authorize
46 disclosure of the content of any communication, or (B) probable cause
47 to believe that a crime has been or is being committed or that exigent
48 circumstances exist and the content of such subscriber's or customer's
49 communications or the geo-location data associated with such
50 subscriber's or customer's call-identifying information is relevant and

51 material to an ongoing criminal investigation, in which case such order
52 shall authorize the disclosure of such information, content or geo-
53 location data. Any such order entered pursuant to this subsection shall
54 state upon its face the case number assigned to such investigation, the
55 date and time of issuance and the name of the judge authorizing the
56 order. The law enforcement official shall have any ex parte order
57 issued pursuant to this subsection signed by the authorizing judge
58 within forty-eight hours or not later than the next business day,
59 whichever is earlier. No order pursuant to this subsection shall
60 authorize the disclosure of any such information, content or data for a
61 period in excess of fourteen days.

62 (c) A law enforcement official may apply directly to a
63 telecommunications carrier or provider of electronic communication
64 service or remote computing service for production of geo-location
65 data for a period not in excess of forty-eight hours, including real-time
66 or historical geo-location data, or any combination of such data,
67 pertaining to an identified subscriber or customer. The
68 telecommunications carrier or provider of electronic
69 telecommunication service or remote computing service shall provide
70 the requested geo-location data upon the applicant stating under oath:
71 (1) That facts exist upon which to base a belief that the data sought is
72 relevant and material to an ongoing criminal investigation; (2) a belief
73 that exigent circumstances exist; and (3) the facts supporting the belief
74 that exigent circumstances exist. Any subsequent application for
75 information from the same telecommunication carrier or provider of
76 electronic communication service or remote computing service for
77 production of geo-location data in connection with the same
78 investigation shall be made pursuant to subsection (b) of this section.

79 [(c)] (d) A telecommunications carrier shall disclose call-identifying
80 information and a provider of electronic communication service or
81 remote computing service shall disclose basic subscriber information
82 to a law enforcement official when an order is issued pursuant to
83 subsection (b) of this section.

84 ~~[(d)]~~ (e) Not later than forty-eight hours after the issuance of an
85 order pursuant to subsection (b) of this section, the law enforcement
86 official shall mail notice of the issuance of such order to the subscriber
87 or customer whose call-identifying information or basic subscriber
88 information is the subject of such order, except that such notification
89 may be delayed for a period of up to ninety days upon the execution of
90 a written certification of such official to the judge who authorized the
91 order that there is reason to believe that notification of the existence of
92 the order may result in (1) endangering the life or physical safety of an
93 individual, (2) flight from prosecution, (3) destruction of or tampering
94 with evidence, (4) intimidation of potential witnesses, or (5) otherwise
95 seriously jeopardizing the investigation. The law enforcement official
96 shall maintain a true copy of such certification. During such ninety-day
97 period, the law enforcement official may request the court to extend
98 such period of delayed notification. Such period may be extended
99 beyond ninety days only upon approval of the court. The applicant
100 shall file a copy of the notice with the clerk of the court that issued
101 such order. If information is provided in response to the order, the
102 applicant shall, not later than ten days after receiving such
103 information, file with the clerk a return containing an inventory of the
104 information received. If a judge issues an order authorizing delayed
105 notification under this subsection, the telecommunications carrier or
106 provider of electronic communication service or remote computing
107 service from whom the call-identifying information or basic subscriber
108 information is sought shall not notify any person, other than the law
109 enforcement official that requested the ex parte order, of the existence
110 of the ex parte order. Any information provided in response to the
111 court order shall be disclosed to the defense counsel.

112 ~~[(e)]~~ (f) A telecommunications carrier or provider of electronic
113 communication service or remote computing service that provides
114 information pursuant to an order issued pursuant to subsection (b) of
115 this section or pursuant to an application made pursuant to subsection
116 (c) of this section shall be compensated for the reasonable expenses
117 incurred in providing such information.

118 [(f)] (g) Any telecommunications carrier or provider of electronic
119 communication service or remote computing service that provides
120 information in good faith pursuant to an order issued pursuant to
121 subsection (b) of this section or an application made pursuant to
122 subsection (c) of this section shall be afforded the legal protections
123 provided under 18 USC 3124, as amended from time to time, with
124 regard to such actions.

125 (h) No information obtained pursuant to subsection (b) or (c) of this
126 section shall be retained for a period in excess of fourteen days, unless
127 such information relates to an ongoing criminal investigation. Any
128 information provided pursuant to said subsection (b) or (c) shall be
129 disclosed to the defense counsel.

130 [(g)] (i) Not later than January fifteenth of each year, each law
131 enforcement official shall report to the Chief State's Attorney the
132 information required by this subsection with respect to each order
133 issued pursuant to subsection (b) of this section and each application
134 made pursuant to subsection (c) of this section in the preceding
135 calendar year. The Chief State's Attorney shall, based upon the reports
136 filed by each law enforcement official and not later than January thirty-
137 first of each year, submit a report, in accordance with the provisions of
138 section 11-4a, to the joint standing committee of the General Assembly
139 having cognizance of matters relating to criminal law and procedure
140 concerning orders issued pursuant to subsection (b) of this section and
141 applications made pursuant to subsection (c) of this section in the
142 preceding calendar year. The report shall include the following
143 information: (1) The number of orders issued pursuant to subsection
144 (b) of this subsection and the number of applications submitted to
145 telecommunications carriers or providers of electronic communication
146 service or remote computing service pursuant to subsection (c) of this
147 section, (2) whether the order was directed to a telecommunications
148 carrier, provider of electronic communication service or provider of
149 remote computing service, (3) whether the information sought was
150 call-identifying information or basic subscriber information, (4) the

151 statutory offense or offenses that were the subject of the investigation,
 152 (5) the number of notifications that were delayed pursuant to
 153 subsection [(d)] (e) of this section, and the reason for such delayed
 154 notification, (6) the number of motions to vacate an order that were
 155 filed, and the number of motions granted or denied, (7) the number of
 156 investigations concluded and the final result of such investigations,
 157 and (8) the status of any criminal prosecution resulting from the
 158 investigation.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2016	54-47aa
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Statement of Legislative Commissioners:

In Section 1(b), "affirms" was changed to "swears" for conformity with the general statutes and "subscriber's" was changed to "subscriber's or customer's" for internal consistency, in Section 1(c), "material and relevant" was changed to "relevant and material", "investigation" was changed to "criminal investigation" and "or remote computing service" was added for internal consistency and in Section 1(e), "provider of electronic communication service or" was added for internal consistency.

JUD *Joint Favorable Subst. -LCO*